

limited partners of ML Media Partners, L.P., except those associated with the general partners) had been considered "parties to the application" other than for citizenship purposes.

Clearly, the ruling sought herein by KMP is fully consistent with the precedent established by the grant of the three aforementioned assignment application. No valid public policy objective would be furthered by reversal of the approach taken by the Commission in its grant of those three assignment applications.

IV. Conclusion


The limited partners in KMP should be deemed to be exempt from attribution for purposes of implementation of the Commission's broadcast multiple ownership and cable TV/television cross-ownership rules. A declaration to this effect by the Commission would not only be consistent with past Commission precedent but would avoid needless conflict with applicable state securities laws and would avoid unnecessary administrative expense and burdens for the Commission and for applicants alike.

WHEREFORE, the foregoing premises considered, KMP's instant Request For Declaratory Ruling should be granted, in the manner described above.

Respectfully submitted,

KAYE, SCHOLER, FIERMAN, HAYS & HANDLER

By:


Irving Gastfreund

By:


Andrew A. Cohen

901 Fifteenth Street, N.W.
Suite 1100
Washington, D.C. 20005

July 6, 1989
12005277

Exhibit 1

Amended and Restated
Agreement of Limited Partners
of
Kagan Media Partners, L.P.

APPENDIX A

AMENDED AND RESTATED

AGREEMENT OF LIMITED PARTNERSHIP

OF

KAGAN MEDIA PARTNERS, L.P.

Dated as of , 1989

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TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
ARTICLE 1 — DEFINED TERMS	A-1
ARTICLE 2 — FORMATION	A-10
2.1 — Organization	A-10
2.2 — Name	A-10
2.3 — Purpose	A-11
2.4 — Business in Other Jurisdictions	A-11
2.5 — Places of Business	A-11
2.6 — Term	A-11
2.7 — Filings	A-11
2.8 — Other Business of Partners	A-11
ARTICLE 3 — PARTNERS AND CAPITAL	A-12
3.1 — General Partners	A-12
3.2 — Original Limited Partner	A-13
3.3 — Limited Partners; Capital Contributions	A-13
3.4 — Partnership Capital	A-13
3.5 — Liability of Limited Partners	A-14
3.6 — Return of Uninvested Capital	A-14
ARTICLE 4 — ALLOCATIONS	A-15
4.1 — Profits	A-15
4.2 — Losses	A-15
4.3 — Special Allocations	A-16
4.4 — Curative Allocations	A-17
4.5 — Other Allocations Rules	A-17
4.6 — Tax Allocations: Code Section 704(c)	A-18
ARTICLE 5 — DISTRIBUTIONS	A-19
5.1 — Net Cash From Operations	A-19
5.2 — Net Cash From Capital Transactions	A-19
5.3 — Excess Offering and Organizational Expenses	A-21
5.4 — Approval of Distributions	A-21
5.5 — Division Among Limited Partners	A-21
5.6 — Amounts Withheld	A-21
ARTICLE 6 — MANAGEMENT	A-21
6.1 — Management and Control of the Partnership	A-21
6.2 — Kagan Executive Committee	A-22
6.3 — Authority of the Managing General Partner	A-22
6.4 — Authority of the Kagan Executive Committee	A-26
6.5 — Authority of the Independent General Partners	A-28
6.6 — Authority of the Administrative General Partner	A-29
6.7 — Other Powers of General Partners	A-29
6.8 — Right to Rely on General Partners	A-30
6.9 — Prohibited Transactions	A-30
6.10 — Restrictions on Authority of General Partners	A-31
6.11 — Duties and Obligations of General Partners	A-32
6.12 — Exculpation and Indemnification of General Partners	A-33
6.13 — Indemnification of the Investment Adviser	A-34
6.14 — Indemnification of the Independent General Partners by the Operating General Partners	A-34

<u>Section</u>	<u>Page</u>
6.15 — Authorization of Registration Statement	A-35
6.16 — Compensation and Expenses of General Partners	A-35
ARTICLE 7 — ROLE OF LIMITED PARTNERS	A-35
7.1 — Rights or Powers	A-35
7.2 — Approval Rights	A-35
7.3 — Compliance With FCC Requirements	A-36
7.4 — Disclosure Obligation	A-36
7.5 — FCC Matters	A-36
ARTICLE 8 — BOOKS AND RECORDS	A-37
8.1 — Books and Records	A-37
8.2 — Reports	A-37
8.3 — Bank Accounts	A-38
8.4 — Accounting and Fiscal Year	A-38
ARTICLE 9 — AMENDMENTS; MEETINGS	A-38
9.1 — Amendments	A-38
9.2 — Amendments on Admission or Withdrawal of Partners	A-39
9.3 — Copies of Amendments	A-39
9.4 — Meetings of the Partners	A-39
9.5 — Action by the Independent General Partners	A-40
9.6 — Election of General Partners	A-40
9.7 — Submissions to Limited Partners	A-40
9.8 — Limitations on Voting Rights	A-40
ARTICLE 10 — TRANSFERS OF UNITS	A-40
10.1 — Restriction on Transfers	A-40
10.2 — Permitted Transfers	A-41
10.3 — Prohibited Transfers	A-41
10.4 — Rights of Unadmitted Assignees	A-42
10.5 — Admission of Assignees as Substituted Limited Partners	A-42
10.6 — Representations; Legend	A-42
10.7 — Distributions and Allocations in Respect to Transferred Units	A-43
ARTICLE 11 — GENERAL PARTNERS	A-43
11.1 — Withdrawal or Retirement by an Independent General Partner	A-43
11.2 — Withdrawal or Retirement by an Operating General Partner	A-43
11.3 — Removal of a General Partner; Designation of a Successor General Partner	A-44
11.4 — Incapacity of a General Partner	A-45
11.5 — Admission of Successor General Partner	A-46
11.6 — Liabilities of a Withdrawn or Removed General Partner	A-46
11.7 — Consent of Limited Partners to Admission of Successor General Partners	A-46
ARTICLE 12 — DISSOLUTION AND WINDING UP	A-46
12.1 — Liquidating Events	A-46
12.2 — Winding Up	A-47
12.3 — Compliance With Timing Requirements of Regulations	A-48
12.4 — Rights of Limited Partners	A-49
12.5 — Notice of Dissolution	A-49
ARTICLE 13 — POWER OF ATTORNEY	A-49
13.1 — General Partners as Attorneys-In-Fact	A-49
13.2 — Nature as Special Power	A-49

<u>Section</u>	<u>Page</u>
ARTICLE 14 — MISCELLANEOUS	A-50
14.1 — Notices	A-50
14.2 — Valuation of the Partnership's Assets	A-50
14.3 — Binding Effect	A-50
14.4 — Headings	A-50
14.5 — Severability	A-50
14.6 — Incorporation by Reference	A-50
14.7 — Further Action	A-50
14.8 — Variation of Pronouns	A-50
14.9 — Governing Law	A-50
14.10 — Waiver of Action for Partition	A-51
14.11 — Counterpart Execution	A-51
14.12 — Sole and Absolute Discretion	A-51

**AMENDED AND RESTATED
AGREEMENT OF LIMITED PARTNERSHIP
OF
KAGAN MEDIA PARTNERS, L.P.,
A DELAWARE LIMITED PARTNERSHIP**

This AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP is entered into and shall be effective as of the day of , 1989, by and among Kagan Media Capital Inc., as Managing General Partner, PaineWebber Media Inc., as Administrative General Partner, Norman Glaser, as the Original Limited Partner, Rochelle B. King, Scott N. Ledbetter and Rod Warner, as Independent General Partners, and those Persons who become Limited Partners of the Partnership as hereinafter provided. This Agreement amends, restates and supersedes in its entirety the Agreement of Limited Partnership of Kagan Media Partners, L.P., dated as of November 15, 1988, among the Managing General Partner, the Administrative General Partner and the Original Limited Partner.

In consideration of the mutual promises made herein, the parties hereby agree to constitute a limited partnership as follows:

ARTICLE 1.

DEFINED TERMS

Capitalized words and phrases used in this Agreement shall have the following meanings:

"Accountants" means Coopers & Lybrand or such other nationally recognized firm of independent certified public accountants as shall be engaged from time to time by the Independent General Partners for the Partnership.

"Acquisition Expenses" means (a) to the extent, if any, not borne by any party other than the Partnership, the Partnership's share of any legal fees and any fees of business consultants, appraisers and accountants, investment banking fees and similar fees incurred in connection with making or the proposal to make any Eligible Investment, and (b) to the extent, if any, not borne by any party other than the Partnership, any other legal fees or expenses, the cost of any credit reports or appraisals, or miscellaneous expenses (including travel and communications expenses) borne by the Partnership in connection with selection, evaluation, and acquisition by the Partnership of any Eligible Investment.

"Acquisition Fees" means, to the extent, if any, not borne by any party other than the Partnership, any fee or commission paid by or on behalf of the Partnership in connection with the selection, evaluation, investigation, negotiation or acquisition of any proposed or acquired Eligible Investment, as the case may be.

"Act" means the Delaware Revised Uniform Limited Partnership Act (6 Del. C. § 17-101, *et seq.*), as amended from time to time (or any corresponding provisions of succeeding law).

"Adjusted Capital Account Deficit" means, with respect to any Partner, the deficit balance, if any, in such Partner's Capital Account as of the end of the relevant fiscal year, after giving effect to the following adjustments:

(a) Credit to such Capital Account any amounts which such Partner is obligated to restore pursuant to any provision of this Agreement or is deemed to be obligated to restore pursuant to Regulations Sections 1.704-1T(b)(4)(iv)(f) and 1.704-1T(b)(4)(iv)(h)(5); and

(b) Debit to such Capital Account the items described in Section 1.704-1(b)(2)(ii)(d)(4), (5) and (6) of the Regulations.

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Section 1.704-1(b)(2)(ii)(d) of the Regulations and shall be interpreted consistently therewith.

"Adjusted Capital Contribution" means, as of any day, the Capital Contributions made by a Limited Partner (a) increased by the amount of any Partnership liabilities which are assumed by such Limited Partner or are secured by any Partnership property distributed to such Limited Partner, and (b) reduced by the amount of cash and the Gross Asset Value of any Partnership property distributed to such Limited Partner pursuant to Sections 3.6, 5.2(d) and 12.2(c) hereof and the amount of any liabilities of such Limited Partner assumed by the Partnership or which are secured by any property contributed by such Limited Partner to the Partnership.

In the event any Person transfers all or any portion of his Units in accordance with the terms of this Agreement, his transferee shall succeed to the Adjusted Capital Contribution of the transferor to the extent it relates to the transferred Units.

"Administration Expenses" means all accountable expenses incurred by the Administrative General Partner relating to investor relations and administration of the Partnership including, without limitation, communication and travel expenses, expenses associated with the preparation of all reports to, and correspondence with, Limited Partners, and the preparation of any required reports and filings with the Securities and Exchange Commission under the Exchange Act or the 1940 Act. Except pursuant to a written agreement approved by the Managing General Partner and a majority of the Independent General Partners pursuant to Section 6.6(a), Administration Expenses shall not include any overhead or allocation of management or personnel time of the Administrative General Partner or any of its Affiliates.

"Administration and Management Expenses" means the Administration Expenses and the Management Expenses.

"Administrative General Partner" means PaineWebber Media Inc., a Delaware corporation, the business address of which is 1200 Harbor Boulevard, Weehawken, New Jersey 07087-6791, in its capacity as administrative general partner of the Partnership.

"Advisers Act" means the Investment Advisers Act of 1940 and the rules and regulations thereunder, as amended from time to time.

"Affiliate" means, when used with reference to a specified Person, an "affiliated person," as defined in the 1940 Act, of such Person.

"Aggregate Offering Expenses" means the aggregate expenses incurred in connection with and in preparing the Partnership for registration and offering and distributing Units to the public (including, without limitation, the Selling Commissions, Marketing Fee, Wholesaling Fee, Wholesaling Expenses, legal and accounting fees and expenses of the Partnership and the Selling Agent, registration and filing fees of any kind, and printing, administrative, mailing and courier expenses of the Partnership, but excluding the Financial Advisory Fee).

"Agreement" means this Amended and Restated Agreement of Limited Partnership, as amended from time to time. Words such as "herein," "hereinafter," "hereof," "hereto" and "hereunder" refer to this Agreement as a whole, unless the context otherwise requires.

"Annual Report" has the meaning set forth in Section 8.2.

"Capital Account" means, with respect to any General Partner or Limited Partner, the Capital Account maintained for such Person in accordance with the following provisions:

(a) To each Person's Capital Account there shall be credited such Person's Capital Contributions, such Person's distributive share of Profits and any items in the nature of income or gain which are specially allocated pursuant to Section 4.3 or Section 4.4 hereof, and the amount of any Partnership liabilities assumed by such Person or which are secured by any Partnership property distributed to such Person.

(b) To each Person's Capital Account there shall be debited the amount of cash and the Gross Asset Value of any Partnership Investments distributed to such Person pursuant to any provision of this Agreement, such Person's distributive share of Losses and any items in the nature of loss or deduction

which are specially allocated pursuant to Section 4.3 or Section 4.4 hereof, and the amount of any liabilities of such Person assumed by the Partnership or which are secured by any property contributed by such Person to the Partnership.

(c) In the event any interest in the Partnership is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred interest.

(d) In determining the amount of any liability in connection with the definitions of "Adjusted Capital Contribution" and "Capital Account," there shall be taken into account Code Section 752(c) and any other applicable provisions of the Code and Regulations.

The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such Regulations. In the event the Operating General Partners shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto (including, without limitation, debits or credits relating to liabilities which are secured by contributed or distributed property or which are assumed by the Partnership or the General Partners and Limited Partners), are computed in order to comply with such Regulations, the Operating General Partners may amend this Agreement to make such modification pursuant to Section 9.1(b)(2), provided that it is not likely to have a material effect on the amounts distributable to any General Partner or Limited Partner pursuant to Section 12 hereof upon the dissolution of the Partnership. The Operating General Partners also shall (1) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the General Partners and Limited Partners and the amount of Partnership capital reflected on the Partnership's balance sheet, as computed for book purposes, in accordance with Regulations Section 1.704-1(b)(2)(iv)(g), and (2) make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Regulations Section 1.704-1(b).

"Capital Contribution" means, with respect to any Partner, the amount of money contributed to the Partnership with respect to the partnership interests held by such Partner. The principal amount of a promissory note which is not readily traded on an established securities market and which is contributed to the Partnership by the maker of the note shall not be included in the Capital Account of any Person until the Partnership makes a taxable disposition of the note or until (and to the extent) principal payments are made on the note, all in accordance with Regulations Section 1.704-1(b)(2)(iv)(d)(2).

"Capital Transaction" means any of the following: (a) a sale, repayment, exchange, transfer, assignment, or other disposition of all or a portion of any Investment (but not including occasional sales in the ordinary course of business of inventory, operating equipment or furniture, fixtures, and equipment); (b) any financing or refinancing of, or with respect to, an Investment; (c) any condemnation or deeding in lieu of condemnation of all or a portion of any property held by the Partnership; or (d) any collection in respect of property, hazard, or casualty insurance (but not business interruption insurance) or any damage award.

"Closing" means any closing of the sale of Units in the Partnership.

"Code" means the Internal Revenue Code of 1986, as amended from time to time (or any corresponding provisions of succeeding law).

"Depreciation" means, for each fiscal year or other period, an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to an asset for such year or other period, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such year or other period, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization or other cost recovery deduction for such year or other period bears to such beginning adjusted tax basis; provided, however, that if the federal income tax depreciation, amortization or other cost recovery deduction for such year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Operating General Partners.

"Eligible Investment" means a Senior-Participation Instrument, Follow-on Investment or Other Investment.

"Excess Offering and Organizational Expenses" means the aggregate amount, if any, by which (a) the expenses incurred in connection with and in preparing the Partnership for registration and offering and distributing Units to the public (excluding the Selling Commissions, Marketing Fee and Financial Advisory Fee, and including, without limitation, the Wholesaling Fee, Wholesaling Expenses, legal and accounting fees and expenses of the Partnership and the Selling Agent, registration and filing fees of any kind, printing, administrative, mailing and courier expenses of the Partnership) exceed (b) 4% of the aggregate Capital Contributions of the Limited Partners.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and any successor legislation, and the rules and regulations promulgated thereunder by the Securities and Exchange Commission.

"Exempt Investment" means an investment in cash items, Government Securities (as such term is defined in Section 2(a)(16) of the 1940 Act) or other high quality debt securities maturing within one year of the time of the investment by the Partnership in such security.

"Extra MGP Expenses" means the amount, if any, by which (a) the Excess Offering and Organizational Expenses paid or satisfied by the Managing General Partner exceeds (b) an amount equal to 70% of the Excess Offering and Organizational Expenses.

"FCC" means the Federal Communications Commission.

"Financial Advisory Fee" means the financial advisory fee payable by the Partnership to the Administrative General Partner in an amount equal to 2% of the aggregate Capital Contributions received by the Partnership from the Limited Partners at a Closing, which fee shall be subject to adjustment as described in Section 6.3(b)(3). The Financial Advisory Fee represents compensation to the Administrative General Partner for the Administrative General Partner's services in providing financial analysis, advice and assistance in the structuring of the Partnership and its proposed investments, and for its role in the administration of the Partnership and in investor relations.

"Financing" means any borrowing incurred or made to finance the Partnership's purchase of any Eligible Investment, or any component thereof.

"Financing Expenses" means, to the extent, if any, not borne by a Portfolio Company or any other party, any legal fees and expenses, the cost of any credit reports or appraisals, recording and filing fees or miscellaneous expenses borne by the Partnership in connection with the negotiation and documentation of Partnership Financings.

"Financing Fee" means any fee or commission borne by the Partnership and paid to any other Person for placing or arranging any Financing, but does not include Financing Expenses.

"Follow-on Investment" means an investment (other than a Temporary Investment) in the securities of a Portfolio Company in which the Partnership holds immediately prior thereto an Eligible Investment, which investment has been either (a) certified by the Managing General Partner to meet the Guidelines, and (1) approved by the unanimous vote of the Kagan Executive Committee, or (2) approved by a majority vote of the Independent General Partners, or (b) approved by the unanimous vote of the Kagan Executive Committee and by a majority vote of the Independent General Partners.

"Front End Fees" shall include the Organization and Offering Expenses, Selling Commissions, Marketing Fee, Financial Advisory Fee, Investment Analysis Fee, Excess Offering and Organizational Expenses (to the extent reimbursable by the Partnership), Acquisition Fees, and Acquisition Expenses.

"General Partner" means any of the Managing General Partner, the Administrative General Partner, the Independent General Partners and/or any other Person who becomes a successor or additional General Partner of the Partnership pursuant to the terms of this Agreement, in such Person's capacity as a general partner of the Partnership. "General Partners" means all such Persons.

"Gross Asset Value" means, with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

(a) The initial Gross Asset Value of any asset contributed by a Partner to the Partnership shall be the gross fair market value of such asset, as determined by the contributing Partner and the Partnership;

(b) The Gross Asset Values of all Partnership assets shall be adjusted to equal their respective gross fair market values, as determined by the Operating General Partners, as of the following times: (1) the acquisition of an additional interest in the Partnership by any new or existing Partner in exchange for more than a *de minimis* Capital Contribution; (2) the distribution by the Partnership to a General Partner or Limited Partner of more than a *de minimis* amount of Partnership Investments as consideration for an interest in the Partnership; and (3) the liquidation of the Partnership within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g); provided, however, that (i) the adjustments pursuant to clauses (1) and (2) above shall be made only if the Operating General Partners reasonably determine that such adjustments are necessary or appropriate to reflect the relative economic interests of the General Partners and Limited Partners in the Partnership, and (ii) the procedures specified in Section 11.3(d) hereof shall, when such Section is applicable, modify the procedures specified in this paragraph (b);

(c) The Gross Asset Value of any Partnership asset distributed to any General Partner or Limited Partner shall be the gross fair market value of such asset on the date of distribution; and

(d) The Gross Asset Values of Partnership assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulation Section 1.704-1(b)(2)(iv)(m) and Section 4.3(f) hereof; provided, however, that Gross Asset Values shall not be adjusted pursuant to this paragraph (d) to the extent the Operating General Partners determine that an adjustment pursuant to paragraph (b) of this definition is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this paragraph (d).

If the Gross Asset Value of an asset has been determined or adjusted pursuant to paragraphs (a), (b) or (d) of this definition, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits and Losses.

"Guidelines" means the guidelines approved by the Independent General Partners setting forth the manner in which investment decisions will be made by the Partnership and the types and structure of investments permitted to be made by the Partnership.

"High Yield Debt Investment" means the investment by the Partnership in a subordinated debt instrument of a Media Property in connection with a leveraged acquisition or leveraged recapitalization of such Media Property, which investment has been either (a) certified by the Managing General Partner to meet the Guidelines, and (1) approved by the unanimous vote of the Kagan Executive Committee, or (2) approved by a majority vote of the Independent Partners, or (b) approved by the unanimous vote of the Kagan Executive Committee and by a majority vote of the Independent General Partners.

"IGP Fee" means the fee payable quarterly in arrears to each of the Independent General Partners in an amount equal to \$6,250 per quarter, which fee represents compensation to the Independent General Partners for the services they perform pursuant to the terms of this Agreement. The IGP Fee shall also include with respect to each Independent General Partner the out-of-pocket expenses incurred by such Independent General Partner in connection with his acting as a General Partner of the Partnership.

"Incapacity" means, as to any General Partner, the withdrawal of such General Partner from the Partnership, the assignment of all of its General Partner interest in the Partnership, the removal of such General Partner in accordance with Section 11.3 of this Agreement, the bankruptcy of such General Partner, the filing of a certificate of dissolution or its equivalent with respect to such General Partner, the revocation of its charter and the expiration of 90 days after the date of notice to the General Partner of such revocation

without a reinstatement of its charter (in the case of a General Partner that is a corporation), or the occurrence of any other event which causes such General Partner to cease to be a general partner of the Partnership under the Act.

"Independent" means any Person who is not an "interested person" (as such term is defined in Section 2(a)(19) of the 1940 Act) of the Partnership.

"Independent General Partners" means Rochelle B. King, Scott N. Ledbetter and Rod Warner, and/or any other Person who becomes a successor or additional General Partner of the Partnership as provided herein and who is not an "interested person" (as such term is defined in Section 2(a)(19) of the 1940 Act) of the Partnership, in such Person's capacity as an Independent General Partner of the Partnership.

"Investment" means a Temporary Investment or an Eligible Investment, as the context requires.

"Investment Adviser" means the Managing General Partner in its capacity as investment adviser to the Partnership pursuant to the terms of the investment advisory agreement, or any successor thereto.

"Investment Analysis Fee" means the investment analysis fee payable by the Partnership to the Managing General Partner in an amount equal to 0.75% of each amount invested by the Partnership in a Senior-Participation Instrument, which fee shall be payable at the closing of the acquisition by the Partnership of the Senior-Participation Instrument to which such fee relates.

"Investment Period" means the 12-month period beginning on the Offering Termination Date.

"Joint Venture Investment" means the interest of the Partnership in a joint venture (whether such joint venture is organized as a general partnership, limited partnership or limited liability company) formed to acquire a Media Property, which investment has been either (a) certified by the Managing General Partner to meet the Guidelines, and (1) approved by the unanimous vote of the Kagan Executive Committee, or (2) approved by a majority vote of the Independent General Partners, or (b) approved by the unanimous vote of the Kagan Executive Committee and by a majority vote of the Independent General Partners.

"Kagan Executive Committee" means the committee consisting of at least one representative of each of the Operating General Partners, which committee will be required to exercise the authority described in Section 6.4. Each Operating General Partner shall be entitled to one vote with respect to each matter submitted to the committee for approval. Each Operating General Partner from time to time may add members representing it to, or delete members representing it from, the committee.

"Limited Partner" means any Person who has been admitted to the Partnership as a limited partner pursuant to the terms of this Agreement, and who is shown as such in the books and records of the Partnership. "Limited Partners" means all such Persons. All references in this Agreement to a majority in interest or a specified percentage of the Limited Partners shall mean Limited Partners holding more than 50% or such specified percentage, respectively, of the Units then held by Limited Partners.

"Managed Company" means any Portfolio Company to which the Partnership or the Managing General Partner "makes available significant managerial assistance" as such term is defined in Section 2(a)(47) of the 1940 Act.

"Management Expenses" means the sum of all amounts previously paid by the Managing General Partner to unaffiliated third parties in connection with the management of the Partnership including, without limitation, communication and travel expenses.

"Managing General Partner" means Kagan Media Capital Inc., a Delaware corporation, the business address of which is 126 Clock Tower Place, Carmel, California 93923, in its capacity as managing general partner of the Partnership.

"Marketing Fee" means the nonaccountable reimbursement by the Partnership to the Selling Agent for marketing and sales expenses in an amount equal to 1% of the aggregate Capital Contributions received by the Partnership from the Limited Partners at a Closing.

"Media Business" means a company whose primary business consists of one or more of the following: owning or operating cable television systems, owning or operating radio or television stations, publishing newspapers, magazines, newsletters or books, owning or operating cellular telephone systems, or originating, creating or distributing television or radio programming.

"Media Property" means an existing cable television system or radio or television station with respect to which the Partnership has made or proposes to make an Investment.

"Net Capital Invested" means the aggregate dollar amount of funds invested by the Partnership in Eligible Investments, but does not include amounts withheld as reserves.

"Net Cash From Capital Transactions" means the net cash proceeds received by the Partnership with respect to any equity component or the principal of any debt component of the Partnership's Investments from all Capital Transactions, less any portion thereof used to pay or establish reserves for all Partnership expenses and contingencies including, without limitation, the IGP Fees, Administration and Management Expenses, the Subordinated Management Fee (provided, however, that amounts can only be paid or reserved with respect to the Subordinated Management Fee at the times contemplated by Section 6.3(b)(9)) and fees payable to the Investment Adviser pursuant to the investment advisory agreement, all as determined by the General Partners in accordance with the terms of this Agreement. "Net Cash From Capital Transactions" shall include all principal and interest payments with respect to any note or other obligation received by the Partnership in connection with a Capital Transaction (but shall exclude any interest on an Investment that is substituted for another Investment, where the issuer of both Investments is the same Person).

"Net Cash From Operations" means the gross cash proceeds received by the Partnership (excluding the Partners' Capital Contributions and proceeds from Capital Transactions) including, without limitation, any amounts attributable to interest that accrued on an Investment prior to the time it was disposed of or satisfied, less the portion thereof used to pay or establish reserves for all Partnership expenses and contingencies including, without limitation, the IGP Fees, Administration and Management Expenses, the Subordinated Management Fee (provided, however, that amounts can only be paid or reserved with respect to the Subordinated Management Fee at the times contemplated by Section 6.3(b)(9)) and fees payable to the Investment Adviser pursuant to the investment advisory agreement, all as determined by the General Partners in accordance with the terms of this Agreement. "Net Cash From Operations" shall not be reduced by depreciation, amortization, cost recovery deductions or similar allowances, but shall be increased by any reductions of reserves previously established.

"1940 Act" means the Investment Company Act of 1940 and the rules and regulations thereunder, as amended by the Small Business Investment Incentive Act of 1980, and as amended from time to time, and any successor legislation.

"Non-Managed Company" means any Portfolio Company which is not a Managed Company.

"Nonrecourse Debt" has the meaning given to the term "nonrecourse liability" by Section 1.704-1T(b)(4)(iv)(k)(3) of the Regulations.

"Nonrecourse Deductions" has the meaning set forth in Section 1.704-1(b)(4)(iv)(b) of the Regulations. The amount of Nonrecourse Deductions for a Partnership fiscal year equals the excess, if any, of the net increase, if any, in the amount of Partnership Minimum Gain during that fiscal year, over the aggregate amount of any distributions during that fiscal year of proceeds of a Nonrecourse Debt that are allocable to an increase in Partnership Minimum Gain, determined according to the provisions of Section 1.704-1(b)(4)(iv)(b) of the Regulations.

"Offering Termination Date" means September 1, 1989 or such earlier date on which the maximum number of Units set forth in the Prospectus is sold or such later date to which such date may be extended in accordance with the Prospectus.

"Operating General Partners" means the Managing General Partner and the Administrative General Partner.

"Organization and Offering Expenses" means the sum of the Wholesaling Fee, Wholesaling Expenses and any other expenses (excluding the Selling Commissions, Marketing Fee and Financial Advisory Fee) incurred in connection with and in preparing the Partnership for registration and offering and distributing Units to the public, up to an aggregate amount equal to 4% of the aggregate Capital Contributions of the Limited Partners.

"Original Limited Partner" means Norman Glaser.

"Other Investment" means the investment by the Partnership, other than a Senior-Participation Instrument or Follow-on Investment, in the equity and/or debt securities of a company owning a Media Property or otherwise engaged in the Media Business and having at least 35 equityholders, which investment has been either (a) certified by the Managing General Partner to meet the Guidelines, and (1) approved by the unanimous vote of the Kagan Executive Committee, or (2) approved by a majority vote of the Independent General Partners, or (b) approved by the unanimous vote of the Kagan Executive Committee and by a majority vote of the Independent General Partners.

"Participating Debt Investment" means an investment in a Media Property in connection with a leveraged acquisition or leveraged recapitalization of such Media Property, which investment consists primarily of subordinated debt and/or preferred stock which may be combined with a contingent interest component or investment in an equity participation, which investment has been either (a) certified by the Managing General Partner to meet the Guidelines, and (1) approved by the unanimous vote of the Kagan Executive Committee, or (2) approved by a majority vote of the Independent General Partners, or (b) approved by the unanimous vote of the Kagan Executive Committee and by a majority vote of the Independent General Partners. An equity participation may take the form of common stock or preferred stock or other securities exercisable for or convertible into equity including, without limitation, options, warrants or convertible debentures.

"Partner Minimum Gain" means an amount, with respect to each Partner Nonrecourse Debt, equal to the Partnership Minimum Gain that would result if such Partner Nonrecourse Debt were treated as Nonrecourse Debt, determined in accordance with Section 1.704-1T(b)(4)(iv)(h) of the Regulations.

"Partner Nonrecourse Debt" has the meaning set forth in Section 1.704-1T(b)(4)(iv)(k)(4) of the Regulations.

"Partner Nonrecourse Deductions" has the meaning set forth in Section 1.704-1T(b)(4)(iv)(h)(3) of the Regulations. The amount of Partner Nonrecourse Deductions with respect to a Partner Nonrecourse Debt for a Partnership fiscal year equals the excess, if any, of the net increase, if any, in the amount of Partner Minimum Gain attributable to such Partner Nonrecourse Debt during that fiscal year over the aggregate amount of any distributions during that fiscal year to the Partner that bears the economic risk of loss for such Partner Nonrecourse Debt of proceeds of such Partner Nonrecourse Debt that are allocable to an increase in Partner Minimum Gain attributable to such Partner Nonrecourse Debt, determined according to the provisions of Section 1.704-1T(b)(4)(iv)(h)(3) of the Regulations.

"Partners" means all General Partners and all Limited Partners, where no distinction is required by the context in which the term is used herein. "Partner" means any one of the Partners.

"Partnership" means the limited partnership continued by this Agreement, as such limited partnership may from time to time be constituted.

"Partnership Minimum Gain" has the meaning set forth in Regulations Sections 1.704-1T(b)(4)(iv)(a)(2) and 1.704-1T(b)(iv)(c).

"Person" means any individual, partnership, corporation, trust or other entity.

"Portfolio Company" means a Person in which the Partnership has made an Eligible Investment.

"Profits" and "Losses" means, for each fiscal year or other period, an amount equal to the Partnership's taxable income or loss for such year or period, determined in accordance with Code Section 703(a) (for this

purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(a) Any income of the Partnership that is exempt from federal income tax and not otherwise taken into account in computing Profits and Losses pursuant to this definition shall be added to such taxable income or loss;

(b) Any expenditures of the Partnership described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profits or Losses pursuant to this definition shall be subtracted from such taxable income or loss;

(c) In the event the Gross Asset Value of any Partnership asset is adjusted pursuant to paragraphs (b) or (c) of the definition of Gross Asset Value, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits and Losses;

(d) Gain or loss resulting from any disposition of Partnership Investments with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the investment disposed of, notwithstanding that the adjusted tax basis of such investment differs from its Gross Asset Value;

(e) In lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such fiscal year or other period; and

(f) Notwithstanding any other provision of this definition, any items which are specially allocated pursuant to Section 4.3 or Section 4.4 hereof shall not be taken into account in computing Profits or Losses.

"Prospectus" means the prospectus of the Partnership that is part of the Registration Statement of the Partnership that has become effective under the Securities Act pursuant to which the Partnership offers Units to the public, as the Prospectus may at any time and from time to time be amended or supplemented.

"Registration Statement" means the registration statement filed by the Partnership with the Securities and Exchange Commission on Form N-2 (File No. 33-25599) under the Securities Act to register the offering and sale of 3,000,000 Units, as the same may be amended from time to time.

"Regulations" means the Income Tax Regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

"Securities Act" means the Securities Act of 1933, as amended, and any successor legislation, and the rules and regulations promulgated thereunder by the Securities and Exchange Commission.

"Selling Agent" means PaineWebber Incorporated, in its capacity as selling agent with respect to the Units.

"Selling Commissions" means the selling commissions payable by the Partnership to the Selling Agent in connection with the offering and sale of the Units in an amount equal to 7% of the aggregate Capital Contributions received by the Partnership from the Limited Partners at a Closing.

"Senior-Participation Instrument" means a Joint Venture Investment, High Yield Debt Investment or Participating Debt Investment.

"Subordinated Management Fee" means the cumulative annual fees payable to the Managing General Partner and the Administrative General Partner in annual amounts equal to .75% and .25%, respectively, of Net Capital Invested as of the end of each fiscal quarter, which fees represent compensation to the Operating General Partners for the managerial supervision provided by the Operating General Partners to the Partnership. In the event the Subordinated Management Fee is not paid in cash in any calendar year, then the term "Subordinated Management Fee" shall include interest on the unpaid balance of such Subordinated Management Fee, commencing as of the first day of the quarter following the quarter with respect to which

such Subordinated Management Fee was to be made, accruing at a rate of 10% compounded annually. Payments in respect of the Subordinated Management Fee shall be in proportion to the aggregate amounts payable to each of the Operating General Partners and shall be deemed made first with respect to amounts that have accrued from prior years, and shall be applied to interest first, then principal.

"Substituted Limited Partner" means any Person admitted to the Partnership as a Limited Partner pursuant to Article 10 hereof and shown as a Limited Partner on the books and records of the Partnership.

"Syndication Expenses" means all expenditures classified as syndication expenses pursuant to Section 1.709-2(b) of the Regulations. Syndication Expenses shall be taken into account under this Agreement at the time they would be taken into account under the Partnership's method of accounting if they were deductible expenses.

"Tax Liability Distribution" has the meaning set forth in Section 5.2(b).

"Temporary Investment" means U.S. government securities, certificates of deposit with maturities of less than one year, commercial paper (rated or unrated) and other short-term securities.

"10% Preferred Return" means a sum equivalent to ten percent per annum, cumulative but not compounded, of the Adjusted Capital Contributions of each Limited Partner, from time to time during the period to which the 10% Preferred Return relates, commencing initially on the date each such Limited Partner is admitted to the Partnership pursuant to Section 3.3(a) hereof.

"Transfer" means, as a noun, any voluntary or involuntary transfer, sale, pledge, hypothecation or other disposition and, as a verb, voluntarily or involuntarily to transfer, sell, pledge, hypothecate or otherwise dispose of.

"12% Preferred Return" means a sum equivalent to twelve percent per annum, cumulative but not compounded, of the Adjusted Capital Contributions of each Limited Partner, from time to time during the period to which the 12% Preferred Return relates, commencing initially on the date each such Limited Partner is admitted to the Partnership pursuant to Section 3.3(a) hereof.

"Unit" means a limited partner interest in the Partnership representing a Capital Contribution of \$20 (as adjusted to reflect increases or decreases in the selling price of Units sold by the Partnership) to the Partnership.

"Wholesaling Expenses" means the nonaccountable reimbursement by the Partnership to the Selling Agent of wholesaling expenses (incurred by or at the request of the Selling Agent) in an amount equal to .3% of the aggregate Capital Contributions received by the Partnership from the Limited Partners at a Closing.

"Wholesaling Fee" means the wholesaling fee payable by the Partnership to the Selling Agent in an amount equal to .7% of the aggregate Capital Contributions received by the Partnership from the Limited Partners at a Closing.

ARTICLE 2.

FORMATION

2.1. *Organization.* The Partnership was organized as a Delaware limited partnership pursuant to a Certificate of Limited Partnership (the "Certificate") dated as of November 14, 1988 and filed in the office of the Secretary of State of the State of Delaware on November 15, 1988. The parties hereto hereby agree to continue the Partnership as a limited partnership pursuant to the provisions of the Act and upon the terms and conditions set forth in this Agreement.

2.2. *Name.* The name of the Partnership shall be "Kagan Media Partners, L.P." The Partnership's business may be conducted under the name of the Partnership or any other name or names deemed advisable by the Operating General Partners. The words "Limited Partnership," "Ltd." or similar words or letters shall be included in the Partnership's name where necessary for the purposes of complying with the laws of any jurisdiction that so requires. The Operating General Partners in their sole discretion may change the name of

the Partnership at any time and from time to time. Subject to Section 6.3(a)(9), the Partnership shall hold all of its Investments in the name of the Partnership and not in the name of any Partner.

2.3. *Purpose.* The Partnership is authorized and empowered to carry out any business activities permitted under the Act including, without limitation, to offer and sell Units as described in the Prospectus and to elect to operate, and to operate, as a business development company under the 1940 Act. The Partnership's investment objectives are to provide the Partners with current income and capital appreciation potential by investing in Eligible Investments as set forth in the Prospectus. The Partnership may engage in any and all activities related, necessary, convenient or incidental to the accomplishment of the foregoing to the extent permitted under the 1940 Act.

2.4. *Business in Other Jurisdictions.* Prior to conducting any business in any jurisdiction, the Operating General Partners shall cause the Partnership either to comply with all the requirements for the qualification of the Partnership to conduct business as a foreign limited partnership in such jurisdiction, or to conduct business in such jurisdiction through other partnerships or entities, or to constitute the Partnership as a limited partnership under the laws of such jurisdiction, or by such other means as the Operating General Partners, upon the advice of counsel, deem appropriate to preserve the Limited Partners' limited liability; provided, however, that the Partnership shall not conduct its business in a manner that, in the opinion of counsel to the Partnership, would cause it to be classified for federal income tax purposes as an association taxable as a corporation and not as a partnership.

2.5. *Places of Business.* The principal place of business and the principal executive office of the Partnership shall be at 126 Clock Tower Place, Carmel, California 93923. The administrative office of the Partnership, from which office the Partnership will handle relations and communications with Limited Partners, shall be at 1200 Harbor Boulevard, Weehawken, New Jersey 07087. Either of the places of business designated in this Section may be changed by the Operating General Partners to any other place, and the Partnership may maintain additional offices at any other place or places as the Operating General Partners may deem advisable. The registered agent for service of process and the registered office of the Partnership shall be The Prentice-Hall Corporation Systems, Inc., 229 South State Street, Dover, Delaware 19901, or any successor as appointed by the Operating General Partners.

2.6. *Term.* The term of the Partnership commenced on the date of the filing of the Certificate as set forth in Section 2.1 hereof, and shall continue until the 12th anniversary of the initial Closing, unless terminated at an earlier date in accordance with the provisions of Article 12 hereof.

2.7. *Filings.* (a) The Operating General Partners shall from time to time execute and cause to be filed original or amended certificates, notices, statements or other instruments and shall take any and all other actions as may be reasonably necessary to perfect and maintain the status of the Partnership as a limited partnership or similar type of entity under the laws of any other states or jurisdictions in which the Partnership engages in business.

(b) Upon the dissolution and completion of winding up of the Partnership, the Operating General Partners (or, in the event there is no remaining Operating General Partner, any Person elected pursuant to Section 12.2 hereof) shall promptly execute and cause to be filed certificates of cancellation in accordance with the Act and the laws of any other states or jurisdictions in which the Partnership has filed certificates.

2.8. *Other Business of Partners.* (a) Except as otherwise provided in this Agreement, any Partner and any Affiliate of any Partner may engage in or possess an interest in other business ventures of any kind, nature or description, independently or with others, whether or not such ventures are competitive with the Partnership. Neither the Partnership nor any Partner shall have any rights or obligations by virtue of this Agreement or the limited partnership relationship created hereby in or to such independent ventures or the income or profits or losses derived therefrom, and the pursuit of such ventures, even if competitive with the business of the Partnership, shall not be deemed wrongful or improper. Nothing in this Agreement shall be deemed to prohibit the General Partners or any Affiliate of the General Partners from dealing, or otherwise engaging in business, with Persons transacting business with the Partnership. The General Partners will act within the procedures and guidelines approved by the Independent General Partners and as set forth in any

exemptive order issued by the Securities and Exchange Commission under the 1940 Act or otherwise designed to minimize any conflict between the Partnership's business and the other business interests of the General Partners and their Affiliates.

(b) On each date that the Partnership makes an investment, each of the Operating General Partners shall deliver to the Independent General Partners a certificate addressed to the Partnership, which certificate shall state that, in connection with making such investment, such Operating General Partner has acted within the procedures and guidelines approved by the Independent General Partners and as set forth in any exemptive order issued by the Securities and Exchange Commission under the 1940 Act and that such Operating General Partner has not otherwise violated the 1940 Act.

(c) The Managing General Partner shall be obligated during any period when the Partnership has sufficient funds available for investment to present to the Partnership any potential Senior-Participation Instrument of which it becomes aware and which it reasonably deems suitable for the Partnership in accordance with the description of the terms of the Partnership's investments in the Prospectus; provided, however, that the Managing General Partner shall not be obligated to make such a presentation to the Partnership if an investment vehicle having similar investment objectives as the Partnership and to which an Affiliate of the Managing General Partner is an investment adviser has had funds available for investment longer than the Partnership. The Managing General Partner shall not be obligated to present to the Partnership any particular potential Other Investment (even if such potential Other Investment would be suitable for the Partnership), or to take steps to modify the structure of any investment opportunity of which it becomes aware in order that such investment, as modified, would be a Senior-Participation Instrument. Affiliates of the Managing General Partner may undertake any investment not required to be presented to the Partnership hereunder, and the Managing General Partner and its Affiliates may invest in, or may offer to third parties the opportunity to invest in, any investment that has been recommended to the Partnership by the Managing General Partner but has not received the requisite approvals of the Kagan Executive Committee or the Independent General Partners as described herein; provided, however, that the Managing General Partner and its Affiliates may not consummate such investment or offer such investment to a third party (1) on terms materially more favorable than those offered to the Partnership, or (2) more than 120 days after the Partnership's rejection of such investment, without reoffering the investment to the Partnership.

ARTICLE 3.

PARTNERS AND CAPITAL

3.1. *General Partners.* (a) The name, residence, business or mailing address and Capital Contribution of each General Partner are as set forth in the books and records of the Partnership. Except as set forth in Section 3.4(d) and Section 12.3 hereof, no General Partner shall be required to lend any funds to the Partnership or to make any other Capital Contribution to the Partnership.

(b) The number of Independent General Partners shall be three. If at any time the number of Independent General Partners is less than a majority of the General Partners as a result of the death, disqualification or bona fide resignation of one or more Independent General Partners, within 90 days thereafter, the remaining General Partners shall unanimously approve and admit one or more successor Independent General Partners so as to restore the number of Independent General Partners to a majority of the General Partners. If at any time the number of Independent General Partners is less than a majority of the General Partners as a result of a vacancy occurring for a reason other than as described in the immediately preceding sentence and no successor Independent General Partner has been elected by the Limited Partners, within 90 days thereafter, the remaining Independent General Partners shall designate and admit one or more successor Independent General Partners so as to restore the number of Independent General Partners to a majority of the General Partners.

(c) Any Person elected or appointed to the office of General Partner shall thereafter hold office until his removal pursuant to Section 11.3 or withdrawal pursuant to Section 11.1 or 11.2, as the case may be, or until his successor shall have been elected and admitted at a meeting of Limited Partners called for the purpose of

electing General Partners. General Partners may succeed themselves in office. In the event that no Independent General Partner remains, the Operating General Partners shall perform all duties of the Independent General Partners under this Agreement to the extent permitted by the 1940 Act and shall, within 90 days, call a special meeting of Limited Partners for the purpose of electing and admitting Independent General Partners. Each Limited Partner hereby consents to the admission of any successor Independent General Partner pursuant to Section 3.1(b), and no further consent shall be required.

3.2. *Original Limited Partner.* (a) The name and the business, mailing or residence address of the Original Limited Partner are set forth on the books and records of the Partnership.

(b) Upon the admission of the Limited Partners to the Partnership pursuant to Section 3.3(a), the Original Limited Partner shall withdraw from the Partnership and shall be entitled to receive forthwith his Capital Contribution, without interest or reduction.

3.3. *Limited Partners; Capital Contributions.* (a) The Operating General Partners are authorized to admit Limited Partners to the Partnership. The Capital Contributions of the Limited Partners shall be made in cash. The manner of the offering of the Units described in the Prospectus, the terms and conditions under which subscriptions for such Units will be accepted, and the manner of and conditions to the sale of Units to subscribers therefor and the admission of such subscribers as Limited Partners will be as provided in the Prospectus in all material respects and subject to any provisions hereof. A Person subscribing for Units at a Closing may be admitted as a Limited Partner, and shall become bound by this Agreement, if such subscriber (or a representative authorized by such subscriber orally, in writing or by other action such as payment for a Unit) executes this Agreement or any other writing evidencing the intent of such subscriber to become a Limited Partner.

(b) Subject to the requirements of the 1940 Act and Section 6.4(c)(2), at any time following the Offering Termination Date, the Operating General Partners are authorized to cause the Partnership to sell additional Units, in the manner and on terms deemed suitable by them in their sole discretion, provided that all Units shall be sold at the "current net asset value" of such Units as determined by the Operating General Partners in accordance with the 1940 Act.

(c) The names, residence, business or mailing addresses and Capital Contributions of the Limited Partners shall be set forth on the books and records of the Partnership, as amended from time to time.

3.4. *Partnership Capital.* (a) Except as otherwise provided in this Agreement, the Partnership shall not redeem or repurchase any Units and no Partner shall have the right to demand or receive a return of his Capital Contributions or withdraw from the Partnership without the consent of the Operating General Partners and a majority in interest of the Limited Partners. Under circumstances requiring a return of any Capital Contributions, no Partner shall have the right to receive property other than cash except as may be specifically provided herein.

(b) Except as otherwise provided in this Agreement or the investment advisory agreement approved by the Independent General Partners, no Partner shall receive any interest, salary or drawing with respect to his Capital Contributions or his Capital Account or for services rendered on behalf of the Partnership or otherwise in his capacity as a Partner.

(c) The General Partners shall have no personal liability for the repayment of the Capital Contribution of any Limited Partner.

(d) In the event there are Excess Offering and Organizational Expenses, the Operating General Partners shall pay or satisfy the amount of such Excess Offering and Organizational Expenses (the Administrative General Partner shall be responsible for satisfying 30% of such Excess Offering and Organizational Expenses and the Managing General Partner shall be responsible for satisfying 70% of such Excess Offering and Organizational Expenses until such time as the Administrative General Partner has satisfied an amount thereof equal to the amount by which its Financial Advisory Fee is reduced pursuant to Section 6.3(b)(3) and the Managing General Partner shall be responsible for satisfying the remainder of such Excess Offering and Organizational Expenses). Any amounts paid by the Operating General Partners with respect to Excess

Offering and Organizational Expenses shall be deemed Capital Contributions of the Operating General Partners. Notwithstanding any other provision of this Agreement, the Administrative General Partner shall not pay any amount with respect to Excess Offering and Organizational Expenses in excess of the amount by which its Financial Advisory Fee is reduced pursuant to Section 6.3(b)(3).

3.5. Liability of Limited Partners. (a) The Limited Partners shall have no obligation to lend any funds to the Partnership or to make contributions to the capital of the Partnership in excess of the amounts contributed pursuant to the provisions of this Article 3. No Limited Partner shall be liable for the debts, liabilities, contracts, or any other obligations of the Partnership. A Limited Partner shall not be required to repay to any Person all or any portion of any negative balance in such Limited Partner's Capital Account.

(b) In accordance with Delaware law, a Limited Partner may, under certain circumstances, be required to return to the Partnership, for the benefit of Partnership creditors, amounts previously distributed to him. It is the intent of the Partnership that no distribution to any Limited Partner pursuant to Section 3.6 or Article 5 shall be deemed a return or withdrawal of capital or a contribution to the Partnership, even if such distribution is accompanied by, for federal income tax purposes or otherwise (in full or in part), a distributive share of depreciation or any other noncash item accounted for as a loss or deduction from or offset to the Partnership's income, and that no Limited Partner shall be obligated to pay any such amount to or for the account of the Partnership or any creditor of the Partnership. Any distribution of money or property to a Limited Partner, whether or not deemed to be a return of capital, shall be deemed to be a compromise within the meaning of Section 17-502(b) of the Act, and the Limited Partner receiving any such money or property shall not be required to return any such money or property to the Partnership or any creditor of the Partnership. However, if any court of competent jurisdiction holds that, notwithstanding the provisions of this Agreement, any Limited Partner is obligated to make any such payment, such obligation shall be the obligation of such Limited Partner and not of the General Partners. The General Partners are authorized to compromise the obligation of a Limited Partner to make Capital Contributions or return money or other property paid or distributed in violation of the Act.

3.6. Return of Uninvested Capital. (a) Any portion of the Capital Contributions of the Partners that has not been invested or committed for investment in Eligible Investments within the Investment Period (except for any amount of such Capital Contributions (i) utilized by the Partnership to pay Organization and Offering Expenses, Selling Commissions, Marketing Fee and Financial Advisory Fee, as provided in the Prospectus, or (ii) utilized by the Partnership to establish reserves for all Partnership expenses and contingencies), shall be distributed as soon as practicable after the end of the Investment Period to the Partners pro rata in proportion to their Capital Contributions, by the Partnership as a return of capital. For the purpose of this Agreement, funds will be deemed to have been committed to investment or reinvestment and will not be returned to the Limited Partners to the extent that:

(1) such funds have been set aside to pay amounts payable, or expected to be payable, under written agreements or under agreements in principle, commitment letters, letters of intent or understanding, option agreements or any similar contracts or understandings which have been executed and are in effect at the end of the Investment Period;

(2) such funds have been set aside for working capital;

(3) such funds have been utilized or set aside to pay Acquisition Expenses, Financing Fees or Financing Expenses in connection with any Partnership funds invested or committed for investment in Eligible Investments within the Investment Period;

(4) such funds have been set aside and reserved at the end of the Investment Period to make (i) contingent payments in connection with any Eligible Investment, or (ii) a Follow-on Investment; provided, however, that any Follow-on Investment must be consummated in accordance with the provisions of Article 6; or

(5) such funds have been utilized or set aside to provide compensating balances, reserve funds, escrow funds, advance payments or other similar funds or set-asides required, or reasonably anticipated by the Kagan Executive Committee to be required, by lenders in connection with any Financing the

proceeds of which are to be applied with, or to recapitalize, any Partnership funds invested or committed for investment within the Investment Period.

(b) If, after the expiration of the Investment Period, the Kagan Executive Committee shall determine that any funds referred to in Sections 3.6(a)(1), 3.6(a)(3), 3.6(a)(4) and/or 3.6(a)(5) have not been and will not be applied to the uses for which such funds were set aside and reserved, such funds shall, as promptly as practicable thereafter, be distributed by the Partnership to the Partners as a return of capital, pro rata in proportion to their Capital Contributions.

ARTICLE 4.

ALLOCATIONS

4.1. *Profits.* After giving effect to the special allocations set forth in Sections 4.3, 4.4 and 4.5(d) hereof, Profits for any fiscal year shall be allocated in the following order and priority:

(a) First, 99% to the Limited Partners and 1% to the General Partners until the cumulative Profits allocated to the Limited Partners pursuant to this Section 4.1(a) for the current and all prior fiscal years is equal to the aggregate 10% Preferred Return for all Limited Partners calculated through the end of the current fiscal year. Profits shall be allocated to the Limited Partners pursuant to this Section 4.1(a) in proportion to their relative 10% Preferred Returns for such fiscal year;

(b) Second, 99% to the Limited Partners and 1% to the General Partners until the cumulative Profits allocated to the Limited Partners pursuant to this Section 4.1(b) and Section 4.1(a) hereof for the current and all prior fiscal years is equal to the aggregate 12% Preferred Return for all Limited Partners calculated through the end of the current fiscal year. Profits shall be allocated to the Limited Partners pursuant to this Section 4.1(b) in proportion to their relative 12% Preferred Returns for such fiscal year;

(c) Third, 99% to the Limited Partners and 1% to the General Partners until the cumulative Profits allocated pursuant to this Section 4.1(c) for the current and all prior fiscal years are equal to the cumulative Losses, if any, allocated pursuant to Section 4.2(a)(ii) hereof for all prior fiscal years;

(d) Fourth, to the Limited Partners until the sum of (i) the cumulative Profits allocated pursuant to this Section 4.1(d) and (ii) the Partnership income and gain allocated pursuant to the last sentence of Section 4.3(g) hereof for the current and all prior fiscal years is equal to the sum of (iii) the Syndication Expenses for the current and all prior fiscal years, and (iv) the Partnership loss and deduction allocated pursuant to the last sentence of Section 4.3(g) hereof for the current and all prior fiscal years; and

(e) The balance, if any, 75% to the Limited Partners and 25% to the General Partners.

4.2. *Losses.* After giving effect to the special allocations set forth in Sections 4.3, 4.4 and 4.5(d) hereof, Losses for any fiscal year shall be allocated as set forth in Section 4.2(a), subject to the limitation in Section 4.2(b).

(a) Losses for any fiscal year shall be allocated in the following order and priority:

(i) First, 75% to the Limited Partners and 25% to the General Partners until the cumulative Losses allocated pursuant to this Section 4.2(a)(i) for the current and all prior fiscal years are equal to the cumulative Profits, if any, allocated pursuant to Section 4.1(e) hereof for all prior fiscal years; and

(ii) The balance, if any, 99% to the Limited Partners and 1% to the General Partners.

(b) The Losses allocated pursuant to Section 4.2(a) hereof shall not exceed the maximum amount of Losses that can be so allocated without causing any Limited Partner to have an Adjusted Capital Account Deficit at the end of any fiscal year. All Losses in excess of the limitation set forth in this Section 4.2(b) shall be allocated to the General Partners.

4.3 *Special Allocations.* The following special allocations shall be made in the following order:

(a) *Partnership Minimum Gain Chargeback.* Notwithstanding any other provision of this Section 4, if there is a net decrease in Partnership Minimum Gain during any Partnership fiscal year, each Partner shall be specially allocated items of Partnership income and gain for such year (and, if necessary, subsequent years) in an amount equal to the greater of (i) such Partner's share of the net decrease in Partnership Minimum Gain, determined in accordance with Section 1.704-1T(b)(4)(iv)(f), or (ii) if such Partner would otherwise have an Adjusted Capital Account Deficit at the end of such year, the amount thereof. Allocations pursuant to the previous sentence shall be made in proportion to the relative amount required to be allocated to each Partner pursuant thereto. The items to be so allocated shall be determined in accordance with Section 1.704-1T(b)(4)(iv)(e) of the Regulations. This Section 4.3(a) is intended to comply with the minimum gain chargeback requirement of the Regulations and shall be interpreted consistently therewith.

(b) *Partner Minimum Gain Chargeback.* Notwithstanding any other provision of this Section 4 except Section 4.3(a), if there is a net decrease in Partner Minimum Gain attributable to a Partner Nonrecourse Debt during any Partnership fiscal year, each Partner with a share of the Partner Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Section 1.704-1T(b)(4)(iv)(h)(5), shall be specially allocated items of Partnership income and gain for such year (and, if necessary, subsequent years) in an amount equal to the greater of (i) such Partner's share of the net decrease in Partner Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Section 1.704-1T(b)(4)(iv)(h)(5), or (ii) if such Partner would otherwise have an Adjusted Capital Account Deficit at the end of such year, the amount thereof. Allocations pursuant to the previous sentence shall be made in proportion to the relative amount required to be allocated to each Partner pursuant thereto. The items to be so allocated shall be determined in accordance with Section 1.704-1T(b)(4)(iv)(h)(4) of the Regulations. This Section 4.3(b) is intended to comply with the minimum gain chargeback requirement of the Regulations and shall be interpreted consistently therewith.

(c) *Qualified Income Offset.* In the event any Partner unexpectedly receives any adjustments, allocations or distributions described in Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) of the Regulations, items of Partnership income and gain shall be specially allocated to each such Partner in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of such Partner as quickly as possible, provided that an allocation pursuant to this Section 4.3(c) shall be made only if and to the extent that such Partner would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article 4 have been tentatively made as if this Section 4.3(c) were not in the Agreement.

(d) *Gross Income Allocation.* In the event any Partner has a deficit Capital Account at the end of any Partnership fiscal year which is in excess of the sum of (i) the amount such Partner is obligated to restore pursuant to any provision of this Agreement, and (ii) the amount such Partner is deemed to be obligated to restore pursuant to Regulations Sections 1.704-1(b)(4)(iv)(f) and 1.704-1T(b)(4)(iv)(h)(5), each such Partner shall be specially allocated items of Partnership income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 4.3(d) shall be made only if any to the extent that such Partner would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Article 4 have been made as if this Section 4.3(d) and Section 4.3(c) hereof were not in the Agreement.

(e) *Nonrecourse Deductions.* Nonrecourse Deductions for any fiscal year or other period shall be specially allocated 99% to the Limited Partners and 1% to the General Partners.

(f) *Partner Nonrecourse Deductions.* Any Partner Nonrecourse Deductions for any fiscal year or other period shall be allocated to the General Partner or Limited Partner who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which such Partner Nonrecourse Deductions are attributable in accordance with Regulation Section 1.704-1(b)(4)(iv)(h).

(g) *Operating General Partner Removal.* In the event an Operating General Partner is entitled to receive removal compensation pursuant to Section 11.3(d) hereof, Partnership income, gain, loss and deduction shall be allocated to the removed Operating General Partner in a manner that results in the removed Operating General Partner's positive capital account balance being equal to the amount of the distribution such removed Operating General Partner will receive pursuant to that Section (after giving effect to all other distributions and allocations for the year of removal).

(h) *Syndication Expenses.* Syndication Expenses for any year or other period shall be specially allocated to the Limited Partners in proportion to their Units, provided, that if Limited Partners are admitted to the Partnership pursuant to Article 3 hereof on different dates, all Syndication Expenses shall be divided among the Persons who own Units from time to time so that, to the extent possible, the cumulative Syndication Expenses allocated with respect to each Unit at any time is the same amount. In the event the General Partners shall determine that such result is not likely to be achieved through future allocations of Syndication Expenses, the General Partners may allocate other income, gain, loss, and deduction of the Partnership so as to achieve the same effect on the Capital Accounts of the Limited Partners.

(i) *Section 754 Adjustment.* To the extent an adjustment to the adjusted tax basis of any Partnership asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Regulations Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the General Partners and Limited Partners in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such Section of the Regulations.

(j) *Deferred Distributions.* In the event any distributions that the General Partners would otherwise be entitled to are retained by the Partnership pursuant to Section 5.2(h) or Section 5.2(i) hereof, or the last paragraph of Section 12.2 hereof, and such amount remains undistributed to the General Partners at the time the Partnership is liquidated under Article 12 hereof, then for the year of liquidation (1) an equal amount of Partnership income or gain shall be allocated to the Limited Partners and an equal amount of loss or deduction shall be allocated to the General Partners, or (2) Partnership income, gain, loss and deduction shall otherwise be allocated to produce results consistent with those that would be obtained under clause (1) of this Section 4.3(j).

4.4 *Curative Allocations.* The "Regulatory Allocations" consist of the allocations to a Partner (or his predecessor) under Section 4.2(b) (last sentence), Section 4.3(c) and Section 4.3(d) hereof, allocations to a Partner (or his predecessor) under Section 4.3(a) hereof to the extent the aggregate amount of such allocations exceeds the cumulative Nonrecourse Deductions allocated to such Partner (or his predecessor), and allocations to a Partner (or his predecessor) under Section 4.3(b) hereof to the extent the aggregate amount of such allocations exceeds the cumulative Partner Nonrecourse Deductions allocated to such Partner (or his predecessor). Notwithstanding any other provisions of this Article 4 (other than the Regulatory Allocations), the Regulatory Allocations shall be taken into account in allocating other items of income, gain, loss and deduction among the General Partners and Limited Partners so that, to the extent possible, the net amount of such allocations of other items and the Regulatory Allocations to each General Partner and Limited Partner shall be equal to the net amount that would have been allocated to each such General Partner and Limited Partner if the Regulatory Allocations had not occurred.

4.5 *Other Allocations Rules.* (a) Except as provided in Sections 4.1(a), 4.1(b), 4.3(h), 4.5(c) and 4.5(d) hereof, all allocations to the Limited Partners shall be divided among them in proportion to the Units held by each. Allocations to the General Partners shall be divided among them in the ratio of 70% to the Managing General Partner, 30% to the Administrative General Partner and 0% to the Independent General Partners.

(b) For purposes of computing the Profits, Losses or any other items allocable to any period, Profits, Losses and any such other items shall be determined on a daily, monthly, or other basis, as determined by the

Operating General Partners using any permissible method under Code Section 706 and the Regulations thereunder.

(c) In the event Limited Partners are admitted to the Partnership pursuant to Article 3 hereof on different dates during any year, the Profits (or Losses) allocated to the Limited Partners for each such year may, in the discretion of the Operating General Partners, be allocated among the Limited Partners to equalize, to the extent possible, in compliance with Code Section 706 and the Regulations thereunder, the cumulative Profits (or Losses) allocated with respect to each Unit. In the event such equalization is not achieved in such year, subsequent allocations of Losses (or Profits) to the Limited Partners pursuant to Section 4.2 (or Section 4.1) hereof may, in the discretion of the Operating General Partners, be made first, to achieve such equalization, and thereafter in proportion to the Units held by each. The special allocations required pursuant to this Section 4.5(c) may be modified to the extent the desired equalization has effectively been achieved previously as a consequence of the application of Section 4.2(b) hereof.

(d) Notwithstanding Sections 4.1 and 4.2 hereof, Profits or Losses allocable to the period prior to the admission of any Limited Partners pursuant to Section 3.3(a) hereof shall be allocated one percent to the Original Limited Partner and 99% to the General Partners.

(e) Allocations with respect to any Unit that is sold, assigned or transferred shall be made in accordance with Section 10.7 hereof.

(f) Except as otherwise provided in this Agreement, all items of Partnership income, gain, loss, deduction and any other allocations not otherwise provided for shall be divided among the Partners in the same proportions as they share Profits or Losses, as the case may be, for the year.

(g) The Partners are aware of the income tax consequences of the allocations made by this Article 4 and hereby agree to be bound by the provisions of this Article 4 in reporting their shares of Partnership income and loss for income tax purposes.

(h) For purposes of determining a Partner's proportionate share of the "excess nonrecourse liabilities" of the Partnership within the meaning of Regulations Section 1.752-1T(e)(3)(ii), the Partners' interests in Partnership profits shall be allocated 1% to the General Partners and 99% to the Limited Partners.

4.6. Tax Allocations: Code Section 704(c). In accordance with Code Section 704(c) and the Regulations thereunder, income, gain, loss and deduction with respect to any property contributed to the capital of the Partnership shall, solely for tax purposes, be allocated among the Partners so as to take account of any variation between the adjusted basis of such property to the Partnership for federal income tax purposes and its initial Gross Asset Value (computed in accordance with paragraph (a) of the definition of Gross Asset Value).

In the event the Gross Asset Value of any Partnership asset is adjusted pursuant to paragraph (b) of the definition of Gross Asset Value, subsequent allocations of income, gain, loss and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Regulations thereunder.

Any elections or other decisions relating to such allocations shall be made by the Operating General Partners in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this Section 4.6 are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing, any Person's Capital Account or share of Profits, Losses, other items or distributions pursuant to any provision of this Agreement.